

REMARKS

I. Overview

Claims 17-36 are pending in the present application. Claims 1-16 were previously canceled. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The issues raised by the Examiner in the Final Office Action dated July 7, 2009 ("Final Action") are as follows:

- Claims 17-19, 22, 25, 26, 28-31, 34 and 35 have been rejected under 35 U.S.C. § 103(a) as assertedly being anticipated by U.S. Patent No. 6,304,915 to Nguyen, et al., (hereinafter "Nguyen") in view of Ehrhardt, *et al.* (hereinafter "Ehrhardt");
- Claims 20, 21, 23, 24, 32 and 33 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Nguyen in view of Ehrhardt and further in view of U.S. Patent Publication No. 2003/0074393 to Peart, (hereinafter "Peart"); and
- Claims 27 and 36 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Nguyen in view of Ehrhardt and further in view of U.S. Patent Publication No. 2003/0112790 to Hayduk, et al., (hereinafter "Hayduk").

Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented herein.

II. Rejections under 35 U.S.C. § 103(a)

Independent claims 17 and 29 stand rejected under 35 U.S.C. § 10(a) as being anticipated by the combination of the Nguyen and Ehrhardt references. Applicant respectfully traverses this rejection because the proposed combination fails to teach or suggest each and every element of the pending independent claims and because the proposed combination of references is not obvious or predictable.

Claim 17 recites:

A method of setting up a communication procedure that is executable on a protocol tester using message sequence charts (MSC) to graphically display the communication procedure between two instances, comprising:

creating a configuration file to be used by the protocol tester, the configuration file including one or more new functions that are not available in an original version of the protocol tester provided by a manufacturer, . . .

Claim 29 recites:

A protocol tester for testing a communication procedure, comprising:
means for creating a configuration file to be used by the protocol tester, the configuration file including one or more new functions that are not available in an original version of the protocol tester provided by a manufacturer,

A. Nguyen does not disclose a protocol tester

Claim 17 requires steps that are performed in conjunction with or by a protocol tester, and claim 29 requires components of a protocol tester.

The Final Action - consistent with the rejections in the prior Office Action - states that “Nguyen et al. discloses a method of setting up a communication procedure that is executable on a protocol tester . . . comprising, creating a configuration file to be used by the protocol tester,” (Final Action at 3). The Final Action does not cite Ehrhardt for the “protocol tester” feature.

As noted by Applicant in the Amendment dated March 23, 2009 (March 2009 Amendment) at page 8, the Nguyen patent is directed to a “payment gateway system” for facilitating secure transmission of data such as encrypted payment requests from merchants. (Nguyen Abstract). The Nguyen reference fails to disclose a protocol tester as required by the claims. The Final Action appears to equate the VPOS (virtual point of sale) terminal of Nguyen with the claimed protocol tester. However, the VPOS terminal does not perform any test functionality. Instead, in the Nguyen system, a separate Test Gateway is used to test a “generic” VPOS. (Nguyen, col. 60, lns. 3-50). The Test Gateway is used to customize the VPOS to work with a bank gateway. (*Id.*). Applicant notes that neither the VPOS nor the Test Gateway test a “protocol.” Instead, the Test Gateway is used to obtain “certificates” that allow a VPOS to operate with a bank. (*Id.*).

B. Nguyen fails to disclose creating the claimed configuration file

Independent claims 17 and 29 require a step of, or means for, “creating a configuration file to be used by the protocol tester, the configuration file including one or more new functions that are not available in an original version of the protocol tester provided by a manufacturer.”

As noted above, Nguyen fails to disclose a protocol tester and, therefore, does not disclose a configuration file “to be used by the protocol tester.”

The Final Action cites column 35, lines 19-29 of Nguyen as teaching the claimed configuration file. (Final Action at 3). Although the cited text includes the words “configuration file,” Nguyen’s configuration file is for a VPOS terminal cartridge – not a “configuration file to be used by the protocol tester” are required in the claims. The cited Nguyen disclosure states:

The VPOS terminal cartridge has a configuration file that allows the user to specify the content-type as well as the language to be used for a cartridge. The first release of the VPOS terminal cartridge supports one content-type and language for each server.

This disclosure merely teaches that a content-type and language is available in a first release of the VPOS terminal cartridge. It does not teach a configuration file that includes one or more new functions that are not available in an original version of the protocol tester provided by a manufacturer. Because Nguyen’s VPOS terminal cartridge is a “first release,” it is apparently the original version and, therefore, cannot include new functions that are not available in an original version. Furthermore, there is no suggestion in Nguyen that a configuration file can be modified or added to provide new functions as required in the claims. The “content-type and language” specified in Nguyen’s configuration file are merely information or data, not “functions” as required in the pending claims.

The Final Action further cites Nguyen at column 8, lines 28-46. (Final Action at 4). As previously noted, it is unclear why this text is cited for the “configuration file” element. The disclosure in column 8 appears to be an example of an object or class used in object oriented programming. This example is completely unrelated to configuration file for a protocol tester and, in fact, appears to be unrelated to the VPOS terminal cartridge and payment gateway that are the focus of the rest of the Nguyen patent.

Applicant previously noted the differences between the alleged “configuration file” disclosure and the claim limitations. (March 2009 Amendment at 10). However, the Final Action failed to address Applicant’s objections.

C. Nguyen fails to teach the elements of the claimed configuration file

Claims 17 and 29 further recite:

the configuration file comprising for each of the new functions:
a name for the new function;

- a data type for the new function;
- an identification of a new description file, the description file comprising code to be used to provide the new function; and
- an identification of a new graphic symbol file for the new function, the graphic symbol file corresponding to a new graphic symbol to be displayed on the protocol tester to allow selection of the new function when setting up the communication procedure;

The Final Action cites portions of Nguyen at columns 57 and 58 as teaching the “name for the new function” element. (Final Action at 4-5). It is unclear what disclosure in the cited text is intended to be “a name for the new function” for the claimed configuration file. The cited text at columns 57-58 uses the words “name” and “function” in the context of a message being decrypted at function block 1884 and the PDU parsing the message into name/value pairs. Applicant submits that this disclosure fails to teach a name for a new function. Moreover, the cited text at columns 57-58 is unrelated to the previously cited text at columns 8 and 35, in which the Final Action purports to find the claimed configuration file.

Applicant previously noted this apparent lack of connection between the alleged “configuration file” disclosure and the alleged “name” disclosure. (March 2009 Amendment at 10). However, the Final Action failed to address Applicant’s objections.

The Final Action cites portions of Nguyen at columns 3 and 4 as teaching the “data type for the new function” element. (Final Action at 5). It is unclear what disclosure in the cited text is intended to be “a data type for the new function” for the claimed configuration file. The cited text at columns 3-4 uses the phrase “data type” in the context of types of data entered by merchants and different discount rates offered to merchants who comply with data types. Applicant submits that this disclosure fails to teach a data type for a new function. Moreover, the cited text at columns 3-4 is unrelated to the previously cited text at columns 8 and 35, in which the Final Action purports to find the claimed configuration file.

Applicant previously noted this apparent lack of connection between the alleged “configuration file” disclosure and the alleged “data type” disclosure. (March 2009 Amendment at 10). However, the Final Action failed to address Applicant’s objections.

The Final Action cites portions of Nguyen at columns 83 and 84 as teaching the “identification of a new description file” element. (Final Action at 5-6). It is unclear what

disclosure in the cited text is intended to be “an identification of a new description file” within the claimed configuration file. The cited text at columns 83-84 is directed to a Data Manager for storing data items and records and to files comprising a “wallet” containing encrypted payment information. Applicant submits that this disclosure fails to teach an identification of a new description file. Moreover, the cited text at columns 83-84 is unrelated to the previously cited text at columns 8 and 35, in which the Final Action purports to find the claimed configuration file.

Applicant previously noted this apparent lack of connection between the alleged “configuration file” disclosure and the alleged “identification of a new description file” disclosure. (March 2009 Amendment at 10). However, the Final Action failed to address Applicant’s objections.

The pending claims further require that the description file comprises “code to be used to provide the new function.” The cited disclosure at columns 83-84 fails to teach code for providing a new function as required in the independent claims.

Applicant previously noted this apparent lack of connection between the alleged “configuration file” disclosure and the alleged “code” disclosure. (March 2009 Amendment at 11). However, the Final Action failed to address Applicant’s objections.

The Final Action cites portions of Nguyen at columns 35-37 as teaching the “identification of a new graphic symbol file for the new function” element. (Final Action at 6-8). It is unclear what disclosure in the cited text is intended to be the “new graphic symbol file” within the claimed configuration file. The cited text at columns 35-37 discloses a graphical user interface, but fails to teach a graphic symbol file as required in the pending claims. Claims 17 and 29 further require that the graphic symbol file corresponds to “a new graphic symbol to be displayed on the protocol tester to allow selection of the new function when setting up the communication procedure.” The cited text at columns 35-37 does not related to setting up a communication procedure or to the selection of a new function.

Applicant previously noted this apparent lack of connection between the alleged “configuration file” disclosure and the alleged “graphic symbol file” disclosure. (March 2009 Amendment at 11). However, the Final Action failed to address Applicant’s objections.

D. Nguyen fails to teach selecting abstract communication interfaces

Claims 17 and 29 recite a step of, or means for, “selecting abstract communication interfaces of the protocol layer for the communication procedure. The Final Action cites column 13 as teaching this element. (Final Action at 9). The cited disclosure refers to Nguyen’s Figure 1B, which is an extremely simple diagram showing customer 120 linked to merchant 130 by interface 150, and merchant 130 linked to payment gateway 140 by interface 170. Neither the cited text nor Figure 1B disclose “abstract communication interfaces of the protocol layer.” The cited text teaches that the SSK protocol may be used on interface 150 and the SET protocol may be used on interface 170. However, there is no disclosure that “abstract communication interfaces” exist within the SSL or SET protocols or and teaching or suggestion of “selecting abstract communication interfaces” within the SSL or SET protocols.

Applicant previously noted this apparent lack of disclosure regarding the “abstract communication interfaces.” (March 2009 Amendment at 11). However, the Final Action failed to address Applicant’s objections.

E. The proposed combination of Nguyen and Ehrhardt is neither obvious nor predictable

Applicant amended claim 17 in the March 2009 Amendment to require that the “abstract communications interfaces selecting and the communication data selecting steps being made graphically by modifying a display interface on the protocol tester.” The Final Action admits that this feature is missing from Nguyen, and instead cites Ehrhardt for this element. (Final Action at 11-14). The Final Action states that it would have been predictable to one of ordinary skill in the art to enhance the Nguyen system using the improvements of Ehrhardt. (Final Action at 13-14). Applicant traverses this proposed modification to Nguyen. In particular, the Final Action appears to argue that it would have been predictable to graphically select a protocol layer for a communication session in Nguyen. (*Id.*). However, as noted above, the Nguyen system does not “select a protocol layer” and does not select “abstract communications interfaces” or “communication data” as required in the pending claims. Therefore, modifications based upon

these features - i.e. features that are missing in Nguyen - cannot stand as the basis for modifications to Nguyen.

F. Insufficient rebuttal to Applicant's response to the rejections in the previous Office Action

As noted above, in the March 2009 Amendment, Applicant identified numerous problems associated with the elements alleged to be disclosed in the Nguyen reference. The Final Action fails to rebut or even address Applicant's arguments. The Final Action merely states that Applicant's arguments "are moot in view of the new ground(s) of rejection." Applicant notes that the same citations to the Nguyen reference are applied in the Final Action as were used in the previous Office Action. (Compare, *e.g.*, December 23, 2008 Office Action at 4-12 and Final Action at 3-11 (citing the same passages in Nguyen to reject the same elements in both Actions).

"Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." M.P.E.P. § 707.07(f). Applicant requests that the Examiner address each of the elements traversed in Applicant's March 2009 Amendment and in the present remarks.

G. Conclusion

The Nguyen reference fails to teach numerous elements of the pending independent claims, including, for example, a protocol tester, a configuration file including a new function, a name or data type for the new function, a new description file, a new graphic symbol, or abstract communication interfaces of a protocol layer. The Ehrhardt reference is not cited for these elements and does not teach these features. Accordingly, independent claims 17 and 29 are not obvious in view of the proposed combination of Nguyen and Ehrhardt under § 103(a). Applicant respectfully requests that the rejection under § 103(a) be withdrawn and the claims passed to allowance.

Claims 18-28 and 30-36 depend from independent claims 17 and 29, respectively, and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully

requested that the Examiner telephone Applicant's attorney at 214-722-8983 so that such issues may be resolved as expeditiously as possible. No fee is believed due in connection with this filing.

Respectfully submitted,

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Date

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